

AMENDED IN SENATE JULY 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1449

Introduced by Assembly Member De Leon
(Coauthor: Senator Strickland)

February 27, 2009

An act to amend Section 1389.8 of the Health and Safety Code, and to amend Section 10119.3 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1449, as amended, De Leon. Health care coverage: solicitation.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (*Knox-Keene Act*), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care ~~and makes a willful violation of the act a crime~~. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law specifies that certain persons who assist applicants in submitting an application to a health care service plan or health insurer have a duty to assist those applicants in providing answers to health questions accurately and completely and requires those persons to make a specified attestation on the written application.

This bill would instead impose that requirement on certain persons who assist applicants in completing an application for an individual health care service plan contract or individual health insurance policy.

Under existing law, a person who willfully makes a false statement on the attestation described above is subject to a civil penalty of up to \$10,000. Under the Knox-Keene Act, these penalties are deposited in the Managed Care Fund.

This bill would instead require that the penalties be deposited in the Managed Care Administrative Fines and Penalties Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1389.8 of the Health and Safety Code is
2 amended to read:

3 1389.8. (a) Notwithstanding any other provision of law, an
4 agent, broker, solicitor, solicitor firm, or sales representative who
5 assists an applicant in completing an application for an individual
6 health care service plan contract has the duty to assist the applicant
7 in providing answers to health questions accurately and completely.

8 (b) An agent, broker, solicitor, solicitor firm, or sales
9 representative who assists an applicant in completing an application
10 for an individual health care service plan contract shall attest on
11 the written application to both of the following:

12 (1) That to the best of his or her knowledge, the information on
13 the application is complete and accurate.

14 (2) That he or she explained to the applicant, in
15 easy-to-understand language, the risk to the applicant of providing
16 inaccurate information and that the applicant understood the
17 explanation.

18 (c) If, in an attestation required by subdivision (b), a declarant
19 willfully states as true any material fact he or she knows to be
20 false, that person shall, in addition to any applicable penalties or
21 remedies available under current law, be subject to a civil penalty
22 of up to ten thousand dollars (\$10,000). Any public prosecutor
23 may bring a civil action to impose that civil penalty. These
24 penalties shall be paid to the Managed Care ~~Fund~~ *Administrative*
25 *Fines and Penalties Fund* and shall be used for the purposes
26 *specified in Section 1341.45.*

27 (d) An application for an individual health care service plan
28 contract shall include a statement advising declarants of the civil
29 penalty authorized under this section.

30 SEC. 2. Section 10119.3 of the Insurance Code is amended to
31 read:

32 10119.3. (a) Notwithstanding any other provision of law, an
33 agent, broker, or sales representative who assists an applicant in

1 completing an application for an individual health insurance policy
2 has the duty to assist the applicant in providing answers to health
3 questions accurately and completely.

4 (b) An agent, broker, or sales representative who assists an
5 applicant in completing an application for an individual health
6 insurance policy shall attest on the written application to both of
7 the following:

8 (1) That to the best of his or her knowledge, the information on
9 the application is complete and accurate.

10 (2) That he or she explained to the applicant, in
11 easy-to-understand language, the risk to the applicant of providing
12 inaccurate information and that the applicant understood the
13 explanation.

14 (c) If, in an attestation required by subdivision (b), a declarant
15 willfully states as true any material fact he or she knows to be
16 false, that person shall, in addition to any applicable penalties or
17 remedies available under current law, be subject to a civil penalty
18 of up to ten thousand dollars (\$10,000). Any public prosecutor
19 may bring a civil action to impose that civil penalty. These
20 penalties shall be paid to the Insurance Fund.

21 (d) An application for an individual health insurance policy
22 shall include a statement advising declarants of the civil penalty
23 authorized under this section.